

**REMARKS**

Applicants respectfully request further examination and reconsideration in view of the amendments made above and comments set forth fully below. Claims 1, 3-7, 9-11 and 13-33 were pending. Within the Office Action, the Claims 1, 3-7, 9-11, 13-19, 21-26 and 28-33 have been rejected and Claims 20 and 27 have been allowed. By the above amendment, Claims 29-33 have been amended and Claim 34 has been added. Claims 1, 3-7, 9-11 and 13-34 are pending.

Each of the references cited within the Office Action is directed to beverage containers. None of the cited references anticipate a paint storage container including a plurality of paint storage compartments and a dispensing mechanism removeably coupled to the base of the paint storage compartments. Within the Office Action, In re Schreiber, 128 F.3d 1473, 44 USPQ2d 1429 (Fed. Cir. 1997) is relied on to support the proposition that the claims may still be anticipated by a reference that does not discuss paint. The applicant respectfully disagrees. This reliance on In re Schreiber in relation to the present claims is misplaced. The claims in In re Schreiber are directed broadly to a “dispensing top” and are rejected by a reference disclosing a spout for nozzle-ready canisters. In re Schreiber, 128 F.3d 1473, 1475 (Fed. Cir. 1997). The patent applicant in In re Schreiber did not specify that the claims were directed to a *popcorn* dispensing top. In contrast to the factual situation in In re Schreiber, in the present application all of the claims are directed to either a “paint storage container” or a “reusable paint container.” These claims cannot be anticipated by references directed to beverage containers which do not include a plurality of paint storage compartments and a dispensing mechanism removeably coupled to the base of the paint storage compartments.

Further, none of the cited references are analogous art to a paint storage container. The Field of the Invention in this application reads “[t]he present invention generally relates to paint cans and containers. More specifically, the present invention relates to a reusable paint container for storing, mixing and dispensing paint products.” It would not have been obvious to someone skilled in the art to look to the cited references, which are all related to beverage containers, when designing a paint storage container.

**Rejections Under 35 U.S.C. § 112**

Within the Office Action, Claims 29-33 have been rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Specifically, it is stated within the Office Action that the Claims 29-33 recite the limitation “includes a diameter sufficient for paint to flow through” which has not been discussed in the specification. The

applicant respectfully disagrees. However, in order to further the prosecution of the present application, the Claims 29-33 have all been amended to replace the language “includes a diameter” with the phrase “has a size.” Within the specification it is provided that “[t]he spigot body 114 includes an aperture 120 and an interior through which the paint flows.” [Present Specification, page 9, lines 26-27] It is clear from at least this quoted sentence that the dispensing mechanism has a size sufficient for paint to flow through. Accordingly, this rejection should be withdrawn.

Within the Office Action, Claims 29-33 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, it is stated that any relationship between a substance being paint and a size of a diameter is too vague to reasonably apprise one of ordinary skill in the art of the scope of the claimed diameter. The applicant respectfully disagrees. As known to those skilled in the art, paint has a certain consistency and viscosity and will not flow through just any size opening. An aperture or opening has to be of a sufficient size to allow paint to flow through. Such a size would be apparent to someone skilled in the art. As described above, within the specification it is provided that “[t]he spigot body 114 includes an aperture 120 and an interior through which the paint flows.” [Present Specification, page 9, lines 26-27] The size of a dispensing mechanism which allows paint to flow through is necessarily bigger than the size of a beverage or liquid dispensing mechanism due to the differences in consistency and viscosity of paint and beverages or liquids. Accordingly, this rejection should be withdrawn.

#### **Rejections Under 35 U.S.C. § 102**

Within the Office Action, Claims 1, 3, 4 and 29 have been rejected under 35 U.S.C. § 102(b) as being anticipated by US Patent No. 5,842,606 to Devito (hereinafter “Devito”). The Applicant respectfully disagrees. Devito teaches a beverage server. Devito explicitly teaches that his invention relates generally to drink serving devices, and, more specifically, to a beverage server able to provide a user with a desired number of drink selections. [Devito, col. 2, lines 10-12] Devito does not teach a paint storage container for storing and dispensing paint. Devito also does not make obvious a paint storage container for storing and dispensing paint. The issues with storing and dispensing paint are very different than storing and dispensing beverages, as discussed above. Further, Devito does not teach a means for dispensing removably coupled to the base of the paint storage compartments for dispensing paint from the paint storage compartments.

In contrast to the teachings of Devito, the present invention is directed towards a paint storage container including a plurality of paint storage compartments formed in downward sloping configuration with each compartment having a spigot coupled to the base for dispensing the stored paint. (Abstract). In one aspect of the present invention, a frame is configured for holding the paint storage compartments. (Specification, page 3, line 22). In another aspect of the present invention, a body is configured for holding the paint compartments. (Specification, page 4, line 7). Moreover, the present invention specifies a means for dispensing removably coupled to the paint storage compartments. (Specification, page 2, lines 18-19). Furthermore, in contrast to the teachings of Devito, the present invention teaches a dispensing means for dispensing paint without having to lift the paint storage compartments from a wall or a resting surface. The dispensing means is removeably coupled to the base of the paint storage compartments. As discussed above, Devito does not teach a paint storage container including one or more paint storage compartments. Devito also does not teach a means for dispensing removeably coupled to the base of the paint storage compartments for dispensing paint from the paint storage compartments.

Within the Office Action, Ex Parte Thilbault is cited for the proposition that, while Claim 1 discusses "paint," it is as an intended operation and is therefore of no significance. The applicant respectfully disagrees. Claim 1 does not merely discuss paint, but is specifically directed to a paint storage container. This is more than an intended operation, but specifically defines the type of apparatus that is claimed. Devito does not teach or make obvious a paint storage container. Further, as described above, the cases cited within the Office Action cannot properly be applied to the present claims, as the present claims are product claims and not directed to machinery which works upon an article or material in its intended use.

The independent Claim 1 is directed to a paint storage container. The paint storage container of Claim 1 comprises a plurality of paint storage compartments each for storing paint having a front, a back, a first side, a second side and a base, a frame holding the paint storage compartments and a means for dispensing. The means for dispensing is removeably coupled to the base of the paint storage compartments for dispensing paint from the paint storage compartments, wherein the means for dispensing is capable of dispensing paint without lifting the paint compartments. As discussed above, Devito does not teach or make obvious a paint storage container. Further, Devito does not teach or make obvious a plurality of paint storage compartments for storing paint, a frame holding the paint storage compartments and a means for dispensing. Devito also does not teach that the means for dispensing is removeably coupled to the base of the paint storage compartments for dispensing paint from the paint storage

compartments. For at least these reasons, the independent Claim 1 is allowable over the teachings of Devito.

Claims 3, 4 and 29 are all dependent on the independent Claim 1. As discussed above, the independent Claim 1 is allowable over the teachings of Devito. Accordingly, the dependent Claims 3, 4 and 29 are all also allowable as being dependent on an allowable base claim.

Within the Office Action, Claims 1, 3, 4 and 29 have been rejected under 35 U.S.C. § 102(e) as being anticipated by US Patent No. 6,109,482 to Briggs (hereinafter “Briggs”). The Applicant respectfully disagrees. Briggs teaches a device for dispensing liquid from a bottle. Briggs explicitly teaches that the general purpose of his invention is to provide a soda dispenser for conveniently dispensing soda from a 2-liter bottle or the like. [Briggs, col. 1, lines 30-35] Briggs does not teach a paint storage container for storing and dispensing paint. Briggs also does not make obvious a paint storage container for storing and dispensing paint. The issues with storing and dispensing paint are very different than storing and dispensing soda in 2-liter bottles. Further, Briggs does not teach a means for dispensing removeably coupled to the base of the paint storage compartments for dispensing paint from the paint storage compartments.

In contrast to the teachings of Briggs, the present invention is directed towards a paint storage container including a plurality of paint storage compartments formed in downward sloping configuration with each compartment having a spigot coupled to the base for dispensing the stored paint. (Abstract). In one aspect of the present invention, a frame is configured for holding the paint storage compartments. (Specification, page 3, line 22). In another aspect of the present invention, a body is configured for holding the paint compartments. (Specification, page 4, line 7). Moreover, the present invention specifies a means for dispensing removably coupled to the paint storage compartments. (Specification, page 2, lines 18-19). Furthermore, in contrast to the teachings of Briggs, the present invention teaches a dispensing means for dispensing paint without having to lift the paint storage compartments from a wall or a resting surface. The dispensing means is removeably coupled to the base of the paint storage compartments. As discussed above, Briggs does not teach a paint storage container including a plurality of paint storage compartments. Briggs also does not teach a means for dispensing removeably coupled to the base of the paint storage compartments for dispensing paint from the paint storage compartments.

Again, within the Office Action, Ex Parte Thilbault is cited for the proposition that, while Claim 1 discusses “paint,” it is as an intended operation and is therefore of no significance. The applicant respectfully disagrees. Claim 1 does not merely discuss paint, but is specifically directed to a paint storage container. This is more than an intended operation, but specifically

defines the type of apparatus that is claimed. Briggs does not teach or make obvious a paint storage container. Further, as described above, the cases cited within the Office Action cannot properly be applied to the present claims, as the present claims are product claims and not directed to machinery which works upon an article or material in its intended use.

The independent Claim 1 is directed to a paint storage container. The paint storage container of Claim 1 comprises a plurality of paint storage compartments each for storing paint having a front, a back, a first side, a second side and a base, a frame holding the paint storage compartments and a means for dispensing. The means for dispensing is removeably coupled to the base of the paint storage compartments for dispensing paint from the paint storage compartments, wherein the means for dispensing is capable of dispensing paint without lifting the paint compartments. As discussed above, Briggs does not teach or make obvious a paint storage container. Further, Briggs does not teach or make obvious a plurality of paint storage compartments for storing paint, a frame holding the paint storage compartments and a means for dispensing. Briggs also does not teach that the means for dispensing is removeably coupled to the base of the paint storage compartments for dispensing paint from the paint storage compartments. For at least these reasons, the independent Claim 1 is allowable over the teachings of Briggs.

Claims 3, 4 and 29 are all dependent on the independent Claim 1. As discussed above, the independent Claim 1 is allowable over the teachings of Briggs. Accordingly, the dependent Claims 3, 4 and 29 are all also allowable as being dependent on an allowable base claim.

### **Rejections Under 35 U.S.C. § 103**

Within the Office Action, Claims 1, 3-7, 9-11, 13-19, 22-26 and 29-33 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over US Patent No. 4,311,017 to Reed. The Applicant respectfully disagrees. Reed teaches a thermoelectric jug cooler for changing the temperature of a quantity of liquid. Reed does not teach a paint storage container for storing and dispensing paint. Reed also does not make obvious a paint storage container for storing and dispensing paint. The issues with storing and dispensing paint are very different than changing the temperature of a quantity of liquid. Further, Reed does not teach a dispensing mechanism removeably coupled to the base of the paint storage compartments to dispense paint from the paint storage compartments.

In contrast to the teachings of Reed, the present invention is directed towards a paint storage container including a plurality of paint storage compartments formed in a downward sloping configuration with each compartment having a spigot coupled to the base for dispensing

the stored paint. (Abstract). In one aspect of the present invention, a frame is configured for holding the paint storage compartments. (Specification, page 3, line 22). In another aspect of the present invention, a body is configured for holding the paint compartments. (Specification, page 4, line 7). Moreover, the present invention specifies a means for dispensing removably coupled to the paint storage compartments. (Specification, page 2, lines 18-19). Furthermore, in contrast to the teachings of Reed, the present invention teaches a dispensing means for dispensing paint without having to lift the paint storage compartments from a wall or a resting surface. The dispensing mechanism is removeably coupled to the base of the paint storage compartments. As discussed above, Reed does not teach a paint storage container including a plurality of paint storage compartments. Reed also does not teach a dispensing mechanism removeably coupled to the base of the paint storage compartments for dispensing paint from the paint storage compartments.

Again, within the Office Action, Ex Parte Thilbault is cited for the proposition that, while Claim 7 discusses “paint,” it is as an intended operation and is therefore of no significance. The applicant respectfully disagrees. Claim 7 does not merely discuss paint, but is specifically directed to a paint storage container. This is more than an intended operation, but specifically defines the type of apparatus that is claimed. Reed does not teach or make obvious a paint storage container. Further, as described above, the cases cited within the Office Action cannot properly be applied to the present claims, as the present claims are product claims and not directed to machinery which works upon an article or material in its intended use.

Further, the thermoelectric jug cooler of Reed is non-analogous art to the paint storage container of the present invention. It would not have been obvious to someone skilled in the art to look to the thermoelectric jug cooler of Reed, when designing a paint storage container, as presently claimed.

The independent Claim 1 is directed to a paint storage container. The paint storage container of Claim 1 comprises a plurality of paint storage compartments each for storing paint having a front, a back, a first side, a second side and a base, a frame holding the paint storage compartments and a means for dispensing. The means for dispensing is removeably coupled to the base of the paint storage compartments for dispensing paint from the paint storage compartments, wherein the means for dispensing is capable of dispensing paint without lifting the paint compartments. As discussed above, Reed does not teach or make obvious a paint storage container which includes a plurality of paint storage compartments each for storing paint. Reed also does not teach or make obvious that the means for dispensing is removeably coupled

to the base of the paint storage compartments. For at least these reasons, the independent Claim 1 is allowable over the teachings of Reed.

Claims 3-6 and 29 are all dependent on the independent Claim 1. As discussed above, the independent Claim 1 is allowable over the teachings of Reed. Accordingly, the dependent Claims 3-6 and 29 are all also allowable as being dependent on an allowable base claim.

The independent Claim 7 is directed to a paint storage container. The paint storage container of Claim 7 comprises a plurality of paint storage compartments each for storing paint and each having a front, a back, a planar first side, a planar second side and a base, a frame holding the paint storage compartments, one or more lids covering the paint storage compartments and a stirring assembly removably coupled to the lids for stirring the paint stored in the paint storage compartments. The paint storage container of Claim 7 further comprises a dispensing mechanism removeably coupled to the base of the paint storage compartments to dispense paint from the paint storage compartments, wherein the dispensing mechanism is capable of dispensing paint without lifting the paint compartments. As discussed above, Reed does not teach or make obvious a paint storage container. Further, Reed does not teach or make obvious a plurality of paint storage compartments each for storing paint, a frame holding the paint storage compartments, one or more lids covering the paint storage compartments and a stirring assembly removably coupled to the lids for stirring the paint stored in the paint storage compartments. Reed also does not teach a dispensing mechanism removeably coupled to the base of the paint storage compartments to dispense paint from the paint storage compartments. For at least these reasons, the independent Claim 7 is allowable over the teachings of Reed.

Claims 9, 10 and 30 are all dependent on the independent Claim 7. As discussed above, the independent Claim 7 is allowable over the teachings of Reed. Accordingly, the dependent Claims 9, 10 and 30 are all also allowable as being dependent on an allowable base claim.

The independent Claim 11 is directed to a paint storage container. The paint storage container of Claim 11 comprises a plurality of paint storage compartments each for storing paint and each having a front, a back, a first side, a second side and a base, a frame holding the paint storage compartments, a dispensing mechanism removably coupled to the base of the paint storage compartments for dispensing paint from the paint storage compartments, wherein the dispensing mechanism is capable of dispensing paint without lifting the paint compartments, one or more lids covering the paint storage compartments and a stirring assembly removably coupled to the lid for stirring the paint stored in the paint storage compartments. As discussed above, Reed does not teach or make obvious a paint storage container. Further, Reed does not teach or make obvious a plurality of paint storage compartments each for storing paint and each having a

front, a back, a first side, a second side and a base. Reed also does not teach or make obvious a dispensing mechanism removeably coupled to the base of the paint storage compartments for dispensing paint from the paint storage compartments. For at least these reasons, the independent Claim 11 is allowable over the teachings of Reed.

Claims 13-15 and 31 are all dependent on the independent Claim 11. As discussed above, the independent Claim 11 is allowable over the teachings of Reed. Accordingly, the dependent Claims 13-15 and 31 are all also allowable as being dependent on an allowable base claim.

The independent Claim 16 is directed to a reusable paint container. The reusable paint container of Claim 16 comprises a plurality of paint compartments each for storing paint and each having a first front, a first back, a first side, a second side and a base, a body holding the paint compartments having a second front, a second back, a planar third side and a planar fourth side, one or more lids removeably coupled to the paint compartments, a stirring mechanism removeably coupled to the outer side of the lids and a fan apparatus removeably coupled to the rod of the stirring mechanism on the inner opposite side of the lids. The reusable paint container of Claim 16 also includes a dispensing mechanism removeably coupled to the base of the paint storage compartments to dispense paint from the paint storage compartments, wherein the dispensing mechanism is capable of dispensing paint without lifting the paint compartments. As discussed above, Reed does not teach or make obvious a reusable paint container. Further, Reed does not teach or make obvious a plurality of paint compartments for storing paint. As discussed above, Reed does not teach or make obvious a dispensing mechanism removeably coupled to the base of the paint storage compartments to dispense paint from the paint storage compartments. For at least these reasons, the independent Claim 16 is allowable over the teachings of Reed.

Claims 17-19 and 32 are all dependent on the independent Claim 16. As discussed above, the independent Claim 16 is allowable over the teachings of Reed. Accordingly, the dependent Claims 17-19 and 32 are all also allowable as being dependent on an allowable base claim.

The independent Claim 22 is directed to a reusable paint container. The reusable paint container of Claim 22 comprises a body having a first side, a second side and a plurality of integral paint compartments, each of the paint compartments having a front, a back, a planar first side, a planar second side and a base, one or more lids removeably coupled to the paint compartments, a stirring mechanism removeably coupled to the outer side of the lids and a fan apparatus removeably coupled to the rod of the stirring mechanism on the inner opposite side of the lid. The reusable paint container of Claim 22 also comprises a dispensing mechanism



removeably coupled to the base of the paint compartments to dispense paint from the paint compartments. As discussed above, Reed does not teach or make obvious a reusable paint container. Further, Reed does not teach or make obvious a body having a plurality of paint compartments. As discussed above, Reed does not teach or make obvious a dispensing mechanism removeably coupled to the base of the paint storage compartments to dispense paint from the paint storage compartments. For at least these reasons, the independent Claim 22 is allowable over the teachings of Reed.

Claims 23-26 and 33 are all dependent on the independent Claim 22. As discussed above, the independent Claim 22 is allowable over the teachings of Reed. Accordingly, the dependent Claims 23-26 and 33 are all also allowable as being dependent on an allowable base claim.

Claims 21 and 28 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Reed in view of Briggs. The applicant respectfully disagrees with this rejection. Claim 21 is dependent on the independent Claim 16. Claim 28 is dependent on the independent Claim 22. As discussed above, the independent Claims 16 and 22 are both allowable over the teachings of Reed. Accordingly, the dependent Claims 21 and 28 are also both allowable as being dependent on an allowable base claim.

Within the Office Action Claims 20 and 27 are allowed.

For the reasons given above, applicants respectfully submit that the Claims 1, 3-7, 9-11 and 13-34 are in a condition for allowance, and allowance at an early date would be appreciated. Should the Examiner have any questions or comments, they are encouraged to call the undersigned at (408) 530-9700 to discuss the same so that any outstanding issues can be expeditiously resolved.

Respectfully submitted,  
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CERTIFICATE OF MAILING (37 CFR § 1.8(a))

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HAVERSTOCK & OWENS LLP.

Date: 4-13-04 By: Jonathan O. Owens